

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Applications of WorldCom, Inc. and)
MCI Communications Corporation for)
Transfer of Control of MCI Communications)
Corporation to WorldCom, Inc.)

CC Docket No. 97-211

**BELL ATLANTIC'S COMMENTS ON PROPOSED
PROTECTIVE ORDER**

WorldCom and MCI have proposed the largest merger in telecommunications history. The U.S. Department of Justice has determined that documents are necessary to evaluate the merger. The European Union has scheduled hearings to address competitive concerns over the merger. Yet WorldCom and MCI are proposing a Protective Order that is far more limiting and restrictive than previous protective orders the Commission has used.

The Commission should reject WorldCom and MCI's attempt to evade scrutiny of their proposed merger. The Commission should adopt instead the substance of the protective orders used in review of other large telecommunications mergers.

Review of Documents by Counsel of Record. WorldCom and MCI propose that their confidential documents may be reviewed only "by outside counsel of record for the parties in this proceeding who are actively engaged in the conduct of this proceeding."

Proposed Protective Order ¶3. This limitation should be rejected for two reasons.

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First, many of the counsel of record in this proceeding are in-house. Bell Atlantic is using only in-house counsel of record in this proceeding. The ploy of limiting the Protective Order to outside counsel would deprive Bell Atlantic and others of the ability to participate in this proceeding. In a previous merger proceeding, MCI itself “object[ed] strenuously to the conditions in . . . proposed protective order which would prevent two of MCI’s three counsel of record who are also corporate officers from access to the documents. . . .” In the Matter of Application of GTE Corporation and Southern Pacific Company for Consent to Transfer Control of Southern Pacific Communications Company and Southern Pacific Satellite Company, Memorandum Opinion and Order, File No. ENF-83-1 at ¶ 7 (February 18, 1983). The Commission accordingly permitted MCI’s in-house counsel access to the documents. In this case, under MCI’s conditions, all five of Bell Atlantic’s counsel of record would be prevented from access.

Second, WorldCom’s and MCI’s proposal is contrary to precedent. In the GTE/Sprint, AT&T/McCaw, and Bell Atlantic/NYNEX merger reviews, the Commission rejected the parties’ requests to exclude in-house counsel from review of confidential documents. These orders permitted “in-house counsel who are actively engaged in the conduct of this proceeding” to review even the most sensitive internal documents. In the Matter of AT&T and Craig O. McCaw Applications for Consent to Transfer Control of Radio Licenses, Protective Order, 9 F.C.C.R. 2610, at ¶3 (May 13, 1994) (“AT&T/McCaw”); In the Matter of the Application of Bell Atlantic Corporation and NYNEX Corporation for Consent to Transfer Control of Licenses and Authorizations,

Modified Protective Order, ND-L-96-10 (Tracking No. 96-0221) at ¶3 (December 5, 1996) (“Bell Atlantic/NYNEX Protective Order”).

The Commission’s policy of permitting all counsel of record to review merger documents is necessary to ensure that the Commission has the benefit of informed and thorough review of the documents. As AT&T argued during the Bell Atlantic/NYNEX proceeding, limitations on review by in-house counsel “should be rejected both as unnecessary to protect applicants’ interests and as a significant limitation upon interested parties’ effective representation and participation in these proceedings.” Letter from Sidley & Austin to Regina Keeney, Dec. 2, 1996, at 1. AT&T further noted in seeking review by its in-house counsel of the most sensitive Bell Atlantic and NYNEX documents that “Bell Atlantic’s and NYNEX’s in-house counsel were permitted access [during the AT&T/McCaw merger review] to the most sensitive documents, and presumably they have abided by that order’s terms in discharging their responsibility.” Sidley & Austin Letter at 3. WorldCom and MCI state no reason for changing the Commission’s consistent practice, and there is none.

WorldCom and MCI also propose a provision that would permit either of them in their sole discretion to block access by counsel of record to confidential documents, until and unless the Commission or a court makes an affirmative determination to the contrary. Proposed Protective Order at ¶15. This procedure would lead to unnecessary disputes and delay, and prejudice the ability of interested parties to participate effectively. It also is not clear what harm this provision is intended to cure, since all counsel must sign a protective order before reviewing any confidential documents.

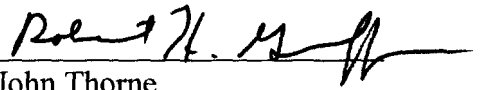
Segregation of Documents. WorldCom and MCI propose a series of conditions on the formatting of submissions to the Commission that will make it more difficult for the parties to write these submissions and for the Commission to read them. Specifically, WorldCom and MCI propose that parties may only reference information if: (1) they “physically segregat[e]” confidential information; and (2) all portions of a pleading containing confidential information are “covered by a separate letter.” Proposed Protective Order ¶ 7. These limitations have not been included in the Commission’s past protective orders, see AT&T/McCaw at ¶¶6&7; Bell Atlantic/NYNEX Protective Order at ¶¶5&6, and for good reason. Such limitations would prevent commenters from writing coherent comments. A commenter would be allowed to make an assertion in a brief about the competitive effects of the merger, but would have to place the support for that assertion in some physically segregated, separately covered appendix to the pleading.

Return of Documents. WorldCom and MCI propose that all copies of confidential documents be returned “within two weeks after conclusion of this proceeding,” Proposed Protective Order at ¶ 13, without regard to additional appeals or proceedings. WorldCom and MCI also request that a certification of compliance be delivered “not more than three weeks after conclusion of this proceeding.” Proposed Protective Order at ¶ 13. This restriction would prevent parties from using the full record on appeal or in later proceedings and is an unnecessary deviation from past practice. Instead, the Commission should adopt time limits comparable to those established in past protective orders: all copies of documents be returned within 120 days and the certification of compliance be delivered within 150 days of the conclusion of this proceeding, or the conclusion of any

appeals and additional proceedings, whichever is later. AT&T/McCaw at ¶12; Bell Atlantic/NYNEX Protective Order at ¶11.

Respectfully submitted,

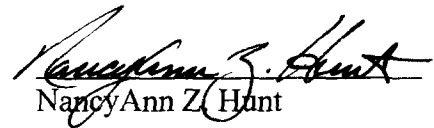
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CERTIFICATE OF SERVICE

I, NancyAnn Hunt, hereby certify that a copy of "Bell Atlantic's Comments on Proposed Protective Order" was served this May 7, 1998, by mailing true copies thereof, postage prepaid to the individuals on the attached service list.


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